

District Judge James L. Robart

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

SEA SHEPHERD LEGAL,

Plaintiff,

V.

DEPARTMENT OF THE INTERIOR.

Defendant.

Case No. C18-1387 JLR

STIPULATED MOTION AND
[PROPOSED] ORDER FOR RELIEF
FROM 26(F) CONFERENCE,
INITIAL DISCLOSURES, AND
JOINT STATUS REPORT

Noted for Consideration:
February 28, 2019

Plaintiff SEA SHEPHERD LEGAL filed the above-captioned lawsuit under the Freedom of Information Act (“FOIA”) against Defendant U.S. DEPARTMENT OF THE INTERIOR, seeking disclosure of certain documents.

On December 26, 2018, this Court granted the parties' stipulated motion setting deadlines for a Rule 26(f) Conference, initial disclosures, and a joint status report. Dkt. 15. On January 30, 2019, the Court re-set those deadlines following resolution of the government shutdown. Dkt. 19. For the reasons stated below, the parties respectfully request that the Court vacate those deadlines, and instead allow the parties to submit a joint status report within the next 60 days.

The ultimate issue in a FOIA action is whether the agency in question has “improperly” withheld agency records. 5 U.S.C. § 552(a)(4)(B); *Kissinger v. Reporters*

1 *Comm. for Freedom of the Press*, 445 U.S. 136, 150 (1980). This is typically a question
2 of law for the Court, rather than a question of fact, and thus, “[s]ummary judgment is the
3 procedural vehicle by which nearly all FOIA cases are resolved.” *Shannahan v. I.R.S.*,
4 637 F. Supp. 2d 902, 912 (W.D. Wash. 2009) (quoting *Los Angeles Times Commc’ns,*
5 *LLC v. Dep’t of Army*, 442 F. Supp. 2d 880, 893 (C.D. Cal. 2006)). The parties agree that
6 the initial disclosure requirements of Rule 26(a)(1) and the requirements of Rule 26(f),
7 requiring the parties to prepare a discovery plan, are not appropriate in this case at this
8 time, as the litigation is unlikely to lead to trial, and very possibly not discovery. That
9 being said, the Plaintiff reserves the right to request discovery should evidence of bad
10 faith or other grounds for discovery emerge.

11 Thus far, the parties have worked cooperatively in an attempt to resolve this
12 litigation without motion practice. The Department has produced responsive documents,
13 and will continue to do so on a regular basis as they become available. Sea Shepherd
14 Legal has initiated discussions concerning the timeline for these productions and claimed
15 exemptions by the Department. The Department has also agreed to produce a formal
16 determination letter, tailored to Plaintiff's specific FOIA request, in accordance with 5
17 U.S.C. § 552(a)(6)(A)(i), as well as indices for all claimed exemptions as required by
18 *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973). Counsel for the parties have conferred
19 and intend to continue to work together on these issues. If at any time in the next 60 days
20 it becomes apparent that resolution between the parties is not feasible, the parties will
21 submit a joint briefing schedule to the Court.

22 | SO STIPULATED.

23 Dated this 27th day of February, 2019.

s/ *Brett W. Sommermeyer*
BRETT W. SOMMERMEYER, WSBA # 30003

s/ Catherine E. Pruett
CATHERINE E. PRUETT, WA BAR # 35140

SEA SHEPHERD LEGAL
226 Eastlake Avenue East, No. 108
Seattle, WA 98102
Phone: (206) 504-1600
Email: brett@seashepherdlegal.org
Email: catherine@seashepherdlegal.org

Attorneys for Plaintiff

SO STIPULATED.

Dated this 27th day of February, 2019.

s/ *Michelle R. Lambert*
MICHELLE R. LAMBERT, NY # 4666657
Assistant United States Attorney
United States Attorney's Office
700 Stewart Street, Suite 5220
Seattle, Washington 98101-1271
Phone: 206-553-7970
Fax: 206-553-4067
Email: michelle.lambert@usdoj.gov

Attorney for Defendant

ORDER

IT IS SO ORDERED.

Dated this 27 day of February, 2019.

JAMES L. ROBART
United States District Judge

STIPULATED MOTION
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UNITED STATES ATTORNEY
700 STEWART STREET, SUITE 5220
SEATTLE, WASHINGTON 98101
(206) 553-7970